Michael R. Pincus
Paul Korman
Mosby Perrow
Van Ness Feldman, LLP
2000 Pennsylvania Ave., NW
Washington, D.C. 20006
(202) 298-1800
mrp@vnf.com

Varu Chilakamarri
David L. Wochner
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006
Phone: 202.778.9000
varu.chilakamarri@klgates.com

January 24, 2025

**VIA CM/ECF**

Hon. Clifton Cislak, Clerk
U.S. Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

Re: Supplemental Authority for *City of Port Isabel, et al. v. FERC*, Nos. 23-1175, 23-1222

Dear Mr. Cislak:

On January 20 and 21, 2025, President Trump issued two Executive Orders (EOs) that are relevant to the pending rehearing petition. *See* White House, Presidential Actions, Unleashing American Energy, Executive Order, *available at* https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/ (Jan. 20, 2025); Ending Illegal Discrimination And Restoring Merit-Based Opportunity, Executive Order, *available at* https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/ (Jan. 21, 2025).

The January 21 EO revoked EO 12,898—a 1994 EO which had directed federal agencies to address the effects of their actions on environmental justice communities. The panel decision here relied on EO 12,898 as the basis for requiring FERC to prepare a supplemental environmental impact statement. *See* Op. at 10-11. Now that EO 12,898 has been revoked, it provides no basis for agencies to conduct any environmental justice analysis at all, let alone to require *vacatur* of an agency's action for procedural inadequacies in the agency's environmental justice review. Indeed, the earlier January 20 EO makes clear that in all "Federal permitting

adjudications or regulatory processes, all agencies shall adhere to only the relevant *legislated requirements* for environmental considerations and any considerations beyond these requirements are *eliminated*." Jan. 20 EO (emphases added). And, as this Court recognized in *Communities Against Runway Expansion, Inc. v. F.A.A.*, 355 F.3d 678 (D.C. Cir. 2004), environmental justice analyses are not legislatively required. *See id.* at 689. Thus, there no longer appears to be authority for FERC to conduct the environmental justice analysis as directed by the panel.

The January 20 EO also revoked EO 11991—the 1977 EO which purported to empower the Council on Environmental Quality (CEQ) to issue NEPA regulations. As noted in our Nov. 19, 2024 letter regarding *Marin Audubon Society v. F.A.A.*, 121 F.4th 902 (D.C. Cir. 2024), the panel incorrectly relied on CEQ regulations as the basis for requiring FERC to prepare a supplemental environmental impact statement. Op. at 16-17. The January 20 EO confirms this point.

The Court should withdraw the panel decision and deny Sierra Club's petition, as a further remand would be pointless. At a minimum, the Court should vacate the panel decision and order supplemental briefing on these developments.

Respectfully submitted,

*/s/ Varu Chilakamarri*

Varu Chilakamarri
David L. Wochner
K&L Gates LLP
1601 K Street, N.W.
Washington, D.C. 20006
(202) 778-9165
varu.chilakamarri@klgates.com

Michael R. Pincus
Paul Korman
Mosby Perrow
Van Ness Feldman, LLP
2000 Pennsylvania Ave., NW
Washington, D.C. 20006
(202) 298-1800
mrp@vnf.com

*Counsel for Texas LNG Brownsville LLC*

cc: All Counsel of record (via CM/ECF)

**CERTIFICATE OF COMPLIANCE**

1. This letter contains 347 words, excluding the parts of the letter exempted by Federal Rule of Appellate Procedure 32(f).

2. This letter complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because this letter has been prepared in a proportionally spaced typeface using Microsoft Office 365 in Times New Roman 14-point font.

Date: January 24, 2025

*/s/ Varu Chilakamarri*

Varu Chilakamarri
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006
Phone: 202.778.9000
varu.chilakamarri@klgates.com

*Counsel for Texas LNG Brownsville LLC*

**CERTIFICATE OF SERVICE**

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that, on January 24, 2025, I electronically filed the foregoing letter with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the appellate CM/ECF system and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

Date: January 24, 2025

*/s/ Varu Chilakamarri*
Varu Chilakamarri
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006
Phone: 202.778.9000
varu.chilakamarri@klgates.com

*Counsel for Texas LNG Brownsville LLC*